

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

PETER J. MILLER, an individual,
CLIFFORD HOYT, an individual, and
CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.,
a Delaware corporation,

Plaintiffs,

v.

PATRICK TREADO, an individual, and
CHEMIMAGE CORP., a Delaware
corporation,

Defendants.

Civil Action No. 05-10367-RWZ

**COMBINED MOTION AND MEMORANDUM IN SUPPORT THEREOF
TO IMPOUND PURSUANT TO LOCAL RULE 7.2
PLAINTIFFS' MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT,
THE [PROPOSED] AMENDED COMPLAINT, AND SEVERAL EXHIBITS THERETO**

Plaintiffs Cambridge Research and Instrumentation, Inc. ("CRI"), Peter J. Miller, and Clifford Hoyt, by their attorneys COHEN, PONTANI, LIEBERMAN & PAVANE, hereby move the Court under LR 7.2 and the Protective Order in this litigation to impound the attached materials; namely, Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Leave to File an Amended Complaint, the [Proposed] Amended Complaint (Exhibit 1 to the Memorandum), and Exhibits P-U and W-X to the [Proposed] Amended Complaint.

This motion includes the memorandum of reasons, including citation of supporting authorities, why this motion should be granted, pursuant to LR 7.1(b)(1).

Exhibit 1 to this motion is a list of exhibits and filings and how each was filed with the Court.

Combined Motion/Memo to Impound under LR 7.2
Plaintiffs' Memo in Supp of Motion to File an Amended Complaint,
The [Proposed] Amended Complaint, and certain exhibits thereto

In support, plaintiffs state as follows:

1. Plaintiffs have filed via ECF redacted versions of their Memorandum in Support of Plaintiffs' Motion for Leave to File an Amended Complaint and the [Proposed] Amended Complaint (Exhibit 1 to the Memorandum).

2. The attached complete unredacted copies of the Memorandum in Support of Plaintiffs' Motion for Leave to File an Amended Complaint and the [Proposed] Amended Complaint (Exhibit 1 to the Memorandum) describe and/or characterize documents which have been designated "CONFIDENTIAL" in accordance with the Protective Order in the present case.

3. The attached copies of Exhibits P-U and W-X to the [Proposed] Amended Complaint were not filed via ECF, but rather blanks were filed in their place. All of Exhibits P-U and W-X have been designated "CONFIDENTIAL" in accordance with the Protective Order in the present case.

4. Plaintiffs and defendants had previously agreed to not disclose the subject matter of the Exhibits P-U and W-X. See **Exhibit X**, p. CRI004143, ¶2.

5. The Protective Order in this case, entered by the Court on May 1, 2006 [D.E. 38], states, at Sect. E(2):

In the event that any Protected Material is used in any Court proceeding in connection with this action, it shall not lose its status as "CONFIDENTIAL" through such use, and the parties shall take all reasonable steps to protect the confidentiality of such Protected Material during such use.

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6. Pursuant to Sect. E(2) of the Protective Order, plaintiffs request that the Court order the impoundment of the attached documents pursuant to LR 7.2, which impoundment shall last until further order of the Court.

7. Pursuant to LR 7.1(a), plaintiffs suggest the attached documents be returned to plaintiffs' custody after the period of impoundment.

WHEREFORE, defendants respectfully request that this Court:

- A. Issue an order impounding the attached documents, namely:
 - Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Leave to File an Amended Complaint;
 - [Proposed] Amended Complaint (Exhibit 1 to the Memorandum); and
 - Exhibits P-U and X-W to the [Proposed] Amended Complaint.
- B. Grant such further and other relief as this Court deems just, equitable and proper.

Combined Motion/Memo to Impound under LR 7.2
Plaintiffs' Memo in Supp of Motion to File an Amended Complaint,
The [Proposed] Amended Complaint, and certain exhibits thereto

Respectfully submitted,

**PETER J. MILLER, CLIFFORD HOYT,
and CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.,**

By their attorneys:

Dated: May 18, 2006

/s/ Teodor Holmberg
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Impound Pursuant to LR 7.2 filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on May 18, 2006.

The Motion to Impound requests that the following documents be sealed:

- Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Leave to File an Amended Complaint;
- [Proposed] Amended Complaint (Exhibit 1 to the Memorandum); and
- Exhibits P-U and X-W to the [Proposed] Amended Complaint.

Unredacted copies of the documents listed above are being served, by hand, with a copy of this Motion, with the Court. In addition, such unredacted copies are also being served, with Plaintiffs' Motion for Leave to File an Amended Complaint and the remaining exhibits, by first class mail, postage prepaid, on May 18, 2006 on:

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/s/ Teodor Holmberg

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Plaintiffs' Motion for Leave to File Amended Complaint
Memorandum in Support thereof
[Proposed] Amended Complaint
Motion to Impound under LR 7.2

INDEX OF EXHIBITS

FOR

PLAINTIFFS' FILING OF:

- **MOTION FOR LEAVE TO FILE AMENDED COMPLAINT [D.E. 40]**
 - **MEMO IN SUPPORT OF MOTION FOR LEAVE TO FILE [D.E. 41]**
 - **[PROPOSED] AMENDED COMPLAINT**
- **COMBINED MOTION/MEMO TO IMPOUND UNDER LR 7.2**

Ex. No.	Bates No.	Brief Description	Filing?
-	[D.E. ____]	COMBINED MOTION/MEMO TO IMPOUND UNDER LR 7.2 All papers listed as being filed BY HAND will be filed with a copy of this motion/memo by hand with the clerk of the court	ECF
1	n/a	Copy of this Index	ECF
-	[D.E. 40]	MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT	ECF
-	[D.E. 41]	Memorandum in Support of Motion for Leave to File an Amended Complaint	ECF: Redacted BY HAND: complete
1	n/a	[Proposed] Amended Complaint	ECF: Redacted BY HAND: complete
Exhibits to the [Proposed] Amended Complaint			
A	CRI000131-CRI000132	Hoyt's handwritten notes memorializing telephone call	ECF
B	CRI000119	Treado's letter concerning loan of LCTF	ECF
C	CRI000120-CRI000126	Hoyt's edits of the article	ECF
D	CRI002409-CRI002018	H. Morris, C. Hoyt, and P. Treado, "Imaging Spectrometers for Fluorescence and Raman Microscopy: Acousto-Optic and Liquid Crystal Tunable Filters", <i>Applied Spectroscopy</i> , vol. 48, no. 7, 1994	ECF
E	CRI000118	April 27, 1994 note from Treado to Hoyt	ECF
F	CRI000135-CRI000136	January 10, 1994 handwritten notes of Hoyt	ECF
G	CRI000137-CRI000139	October 21, 1994 letter from Treado to Hoyt	ECF

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Ex. No.	Bates No.	Brief Description	Filing?
H	CRI000582-CRI000605	1994 Small Business Innovation Research (SBIR) Phase I Proposal entitled "High Definition Raman Imaging Microscope"	ECF
I	CRI000611-CRI000635	1995 SBIR Phase I Proposal	ECF
J	CRI000636	June 8, 1995 Letter from Treado to Miller	ECF
K	CRI000639-CRI000664	Final Report for SBIR Phase I	ECF
L	CRI000665-CRI000704	1996 SBIR Phase II Proposal	ECF
M	CRI001739-CRI001755	the '347 application	ECF
N	CRI001867-CRI001874	Treado's Rule 1.132 Declaration	ECF
O	CRI001156-CRI001164	the '476 patent	ECF
P	CRI001120-CRI001121	May 11, 2000 letter	BY HAND
Q	CRI0001108	July 27, 2000 letter	BY HAND
R	CRI004085	July 31, 2000 letter	BY HAND
S	CRI001104	August 7, 2000 letter	BY HAND
T	CRI001101-CRI001102	August 11, 2000 letter	BY HAND
U	CRI004077	October 12, 2000 letter	BY HAND
V	CRI001524-CRI001525; CRI001188-CRI001192; CRI001219-CRI001224; CRI001252	Excerpts from the provisional application	ECF
W	CRI004074	October 27, 2000 letter	BY HAND
X	CRI004143-CRI004144	- - - -	BY HAND
Y	CRI001641-CRI001679	the '391 application	ECF
Z	CRI002027-CRI002033	Jan. '04 Assignment recorded at Reel/Frame 014302/0906	ECF
AA	CRI001536-CRI001551	the '962 patent	ECF
BB	CRI003044-CRI003045	January 20, 2005 letter from Daniel H. Golub to Martin B. Pavane	ECF
CC	CRI002954-CRI002959	Reissue Declaration of U.S. Reissue App. Ser. No. 11/103,423	ECF
DD	CRI002158-CRI002159	August 22, 2005 Notice of Abandonment	ECF
EE	CRI002851-CRI002852	October 5, 2005 Petition to Revive	ECF
FF	CRI002900	January 13, 2006 PTO Decision on Petition to Revive	ECF

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Ex. No.	Bates No.	Brief Description	Filing?
GG	CRI004137	PTO Website Continuity Data for the '077 application	ECF
HH	CRI004138-CRI004142	Preliminary Amendment in U.S. Pat. Ser. No. 11/091,126	ECF